

Division of Securities
Utah Department of Commerce
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Salt Lake City, UT 84114-6760
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FAX: (801) 530-6980

**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF:

JAMES HOPKINS, CRD #2688074;
**ADAM HARRINGTON
RUCKSDESCHEL, CRD #2481064,**
ROBERT JOHN GRABOWSKI, CRD
#1639890

Respondents.

**STIPULATION AND CONSENT
ORDER AS TO ADAM
HARRINGTON RUCKSDESCHEL**

Docket No. SD-02-0138

Docket No. SD-02-0139

Docket No. SD-02-0140

The Utah Division of Securities (Division), by and through its Director of Licensing, George Robison, and Adam Harrington Rucksdeschel (Rucksdeschel), CRD #2481064, hereby stipulate and agree as follows:

1. The Division commenced agency action against Rucksdeschel and two other agents of The Thornwater Company, L. P. (Thornwater), namely, Robert John Grabowski (Grabowski) and James Hopkins (Hopkins), by petitioning for an order revoking and barring their licenses, and imposing a fine, on September 23, 2002. The Division also

issued an Order to Show Cause against Thornwater and another Thornwater agent, Thomas Russo (Russo), at that time. The actions against Hopkins and Russo were later resolved by Consent Orders, and the actions against Thornwater and Grabowski are pending, with an expected hearing date in April, 2006.

2. Rucksdeschel and the Division have agreed to resolve the action against Rucksdeschel through this Stipulation and Consent Order (Order).
3. Rucksdeschel admits the jurisdiction of the Division over him and over the subject matter of this action.
4. Rucksdeschel waives any right to a hearing to challenge the Division's evidence and present evidence on his behalf. Rucksdeschel also waives a right to appeal this Order.
5. Rucksdeschel has read this Order, understands its contents, and enters into this Order voluntarily. No promises or threats have been made by the Division, nor by any representative of the Division, to induce him to enter into this Order other than as described herein.
6. Rucksdeschel is represented by attorney Mark Griffin and is satisfied with the legal representation he has received.

I. FINDINGS OF FACT

The Division makes the following findings of fact:

The Broker-Dealer, The Client, The Agents

7. The Thornwater Company, L.P. (Thornwater) is a broker-dealer that was licensed by the Division from November 20, 1995 until December 10, 2001, when its license was suspended by emergency order for failure to comply with an audit by the Division. The emergency order of suspension became permanent on January 14, 2002. The Division commenced a subsequent action against Thornwater on September 23, 2002, when it issued an order to show cause. The order to show cause was amended on April 8, 2005.
8. James Garland (Garland) is a Utah resident and was a client of Thornwater from June 2000 to December 10, 2001, when Thornwater terminated its relationship with all Utah clients. Garland became a client of Thornwater when Russo transferred Garland's account to Thornwater from another firm.
9. Thomas Russo (Russo) was employed by Thornwater as a broker-dealer agent and was the account executive of Garland's account at Thornwater from January 1999 to June 1999. By stipulation, Russo was barred from associating with a licensed broker-dealer or investment adviser in Utah.
10. James Hopkins (Hopkins) was employed by Thornwater as a broker-dealer agent and managed Garland's account from March 1999 to April 2000. By stipulation, Hopkins agreed to never license in the State of Utah again.
11. Adam Harrington Rucksdeschel (Rucksdeschel) was employed with Thornwater as a broker-dealer agent from November 1999 to August 2002. In association with two

previous broker-dealers, Rucksdeschel was licensed in Utah from October 1994 through April 1999, but was not associated with Thornwater until November 1999. Rucksdeschel was licensed in Utah from May 2000 until March 2002. After Thornwater shut down, Rucksdeschel joined the former owner, Robert Grabowski and at least six former Thornwater agents (including Thornwater's former owners and executive officers) at another broker-dealer, Sky Capital, LLC (Sky Capital). Rucksdeschel was employed at Sky Capital from August 2002 to September 2005.

12. Robert John Grabowski (Grabowski) was president and CEO of Thornwater. Grabowski was licensed in Utah from January 1999 until March 2002. Grabowski has been employed as a registered representative at Sky Capital from June 2003 to the present.

Unauthorized Margin Trades

13. In January 2000, Rucksdeschel telephoned Garland to offer his services as a broker-dealer agent because Hopkins, the agent of record at that time, no longer actively managed the account. Rucksdeschel claimed he was a knowledgeable broker and assured Garland he was experienced in the technology sector. Rucksdeschel claimed to have worked for the SEC. Rucksdeschel also claimed to have non-public information on the stocks he was attempting to sell to or had sold to Garland. Rucksdeschel convinced Garland to let Rucksdeschel to manage the account.
14. On February 18, 2000, Garland was issued a margin call which required payment of

either \$30,000 in cash or that Garland sell the equivalent value in securities to cover the call. When Garland telephoned to complain about the margin call, Rucksdeschel told him to ignore the request and that the notice of a margin call was in error.

15. In fact, between January 2000 and April 12, 2000, Rucksdeschel had made ten margin trades in Garland's account prior to Garland signing a margin agreement.
16. In April 2000, a sales assistant for Thornwater telephoned Garland and told him his account would be sold to cover margin calls if Garland did not sign a margin agreement on his account. Garland tried, without success, to contact Rucksdeschel¹ and discuss the threatened sale. Under the threat of forced liquidation, Garland signed a margin application on April 12, 2000 and faxed it to Thornwater.

Unlicensed Activity

17. Though Rucksdeschel was previously licensed in Utah, Rucksdeschel began trading in Garland's account in January 2000, when he was not licensed, and he did not become licensed in Utah until May 2000.²
18. In recorded conversations with Garland, Rucksdeschel admitted purchasing and/or selling stocks in Westell, C-Net, Communications Intelligence, Cell Therapeutics and Data Broadcasting in Garland's account before he was licensed in Utah.

¹Rucksdeschel claims he was out of the country at this time.

²Rucksdeschel claims he relied on Thornwater to submit his application for Utah and other states, but did not independently confirm that he had a Utah license before commencing business in Utah.

Ignoring Instructions

19. After signing the margin agreement, Garland instructed Rucksdeschel to take the account out of margin and not to make any more margin trades.
20. Rucksdeschel ignored Garland's instructions, did not take Garland out of margin and Garland received another sixteen notifications of margin calls after April 12, 2000.

Unauthorized Trades

21. Garland did not give Thornwater discretionary authority on the account.
22. Rucksdeschel made unauthorized purchases in Garland's account, including but not limited to:
 - a. 4,000 shares of Data Tech;
 - b. 3,000 shares of Communication Intelligence; and
 - c. 2,000 shares of Westell.

Unsuitable Trades

23. Though Garland previously had accounts at other firms and had previously purchased low-priced, speculative securities, Garland was an unsophisticated investor who relied on Rucksdeschel's expertise in buying and selling stocks.
24. Garland did not want to invest in stocks for which Thornwater acted as a market maker and expressed his concerns to Rucksdeschel about these types of securities. However, Rucksdeschel invested in stocks for which Thornwater made a market and in low-priced

speculative stocks that were unsuitable for Garland.

Excessive Trades

25. From January 2000 through July 2000, Garland deposited a total of \$125,604.55 in cash and \$32,693.50 in securities. From January 2000 to February 2001, Rucksdeschel shared in \$26,036.88 in commissions, Garland was charged \$2,459.43 in margin interest, and purchases were made in the amount of \$433,047.43.
26. The account had a turnover ratio of 11.03 percent, meaning the entire portfolio was turned over an average of 11.03 times in a year. The cost to equity ratio³ of the account was 72.57 percent. The account lost a total of \$147,140.49 or 92.95 percent.

Material Misrepresentations

27. Rucksdeschel made material misrepresentations of the following facts:
 - a. The initial and continued use of margin in Garland's account.
 - b. Rucksdeschel said he had worked for the emerging markets division of the Securities and Exchange Commission (SEC) helping undeveloped countries set up securities markets. In fact, Rucksdeschel had only served a three-month internship with the SEC in 1992 in that division.

³The cost to equity ratio is a determination of the percentage of return on the customer's average net equity in order to pay broker-related commissions and costs. These costs include commissions, fees, mark-ups, mark-downs, selling concessions and margin interest. In other words, any compensation that drives the trade.

- c. Rucksdeschel was not licensed when he made trades in Garland's account before May 2000.
- d. Rucksdeschel said he had non-public information about stocks he was attempting to sell to and/or had sold to Garland.

High Pressure and Boiler Room Tactics

- 28. Rucksdeschel was pushy, used high pressure sales practices and profanity.

II. CONCLUSIONS OF LAW

- 29. Rucksdeschel made untrue statements of material fact and omitted to state material facts necessary in order to make statements made, in the light of the circumstances in which they were made, not misleading, in violation of Utah Code Ann. § 61-1-1(2).
- 30. Rucksdeschel engaged in acts, practices, and/or a course of business which operated as a fraud or deceit, in violation of Utah Code Ann. § 61-1-1(3).
- 31. Rucksdeschel engaged in dishonest or unethical business practices in the securities business in violation of Utah Code Ann. § 61-1-6(2)(g), including, but not limited to:
 - a. unsuitable recommendations, as proscribed by Utah Admin. Code R164-6-1g(C)(3);
 - b. exercising discretionary power without prior written authorization, as proscribed by Utah Admin. Code R164-6-1g(C)(5);
 - c. excessive trading, as proscribed by Utah Admin. Code R164-6-1g(C)(2);

- d. unauthorized transactions, as proscribed by Utah Admin. Code R164-6-1g(C)(4);
- e. executing trades on margin without a written margin agreement in effect, as proscribed by Utah Admin. Code R164-6-1g(C)(6); and
- f. effecting transactions by deceptive or fraudulent device as proscribed by Utah Admin. Code R164-6-1g(C)(15).

III. AGREEMENT

32. Rucksdeschel neither admits nor denies the substance of the Division's investigative findings or conclusions, but consents to the Division entering an Order:
- a. Suspending his license for two years from the date this Order is entered;
 - b. Enjoining him from violating the Utah Uniform Securities Act;
 - c. Requiring Rucksdeschel to pay:
 - 1. A \$25,000 fine to the Division within 30 days of this Order;
 - 2. Restitution in the amount of \$25,000 to James Garland within 30 days of this Order.
 - d. Requiring him to cooperate with the Division's case against Thornwater and Grabowski. Rucksdeschel will provide a recorded statement to the Division which summarizes his testimony concurrent with the signing of this Order.
- Rucksdeschel represents he has had no contact with Thornwater, Grabowski or counsel for them concerning the subject matter of this case since February, 2006.

Rucksdeschel agrees to promptly notify the Division of any communication between Rucksdeschel and any other Respondent or their counsel in this action.

33. If the Division finds that Rucksdeschel materially violates any term of this Stipulation and Consent Order, after notice and opportunity to be heard before an administrative officer, his license will be revoked and he will be barred from associating with a broker-dealer or investment adviser licensed in Utah. The fine amount will also be increased to \$50,000.

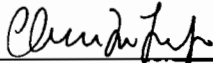
IV. FINAL RESOLUTION

34. Rucksdeschel acknowledges that this Consent Order, upon approval by the Division Director (Director) and subject to the approval of the Utah Securities Advisory Board, shall be the final compromise and settlement of this matter. Rucksdeschel further acknowledges that if the Director and the Advisory Board do not accept the terms of the Order, it shall be deemed null and void and without any force or effect whatsoever.
35. Rucksdeschel acknowledges that the Order does not affect any civil or arbitration causes of action that third parties may have against him arising in whole or in part from his actions, and that the Order does not affect any criminal causes of action that a prosecutor might bring.
36. This Order constitutes the entire agreement between the parties herein, and supersedes and cancels any and all prior negotiations, representations, understandings, or agreements


between the parties. There are no verbal agreements that modify, interpret, construe, or otherwise affect this Order in any way.

Utah Division of Securities


Date: 4/17/06

By: 
for George Robison
Director of Licensing

Date: April 20/06


Adam Harrington Ruckdeschel

Approved:


Jeffrey Buckner
Assistant Attorney General

Approved:


Mark Griffin
Attorney for Ruckdeschel

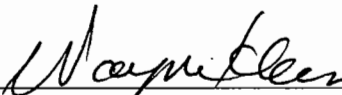
ORDER

It is hereby ordered that:

1. The Division has made a sufficient showing of Findings of Fact and Conclusions of Law to form a basis for this settlement, though Ruckdeschel neither admits nor denies the Division's Findings of Fact or Conclusions of Law.
2. Ruckdeschel's license is suspended for two years from the entry of this Order.

3. Rucksdeschel is enjoined from violating the Utah Uniform Securities Act.
4. Rucksdeschel pay a fine to the Division in the amount of \$25,000. The fine shall be paid within thirty (30) days of the entry of this Order.
5. Rucksdeschel pay James Garland the amount of \$25,000 as restitution to this customer for Rucksdeschel's conduct. A certified check will be provided to the Division within thirty (30) days of the entry of this Order.
6. Requiring him to cooperate with the Division's case against Thornwater and Grabowski. Rucksdeschel will provide a recorded statement to the Division which summarizes his testimony concurrent with the signing of this Order. Rucksdeschel represents he has had no contact with Thornwater, Grabowski or counsel for them concerning the subject matter of this case since February, 2006. Rucksdeschel agrees to promptly notify the Division of any communication between Rucksdeschel and any other Respondent or their counsel in this action.
7. If the Division finds that Rucksdeschel materially violates any term of this Stipulation and Consent Order, after notice and opportunity to be heard before an administrative officer, his license will be revoked and he will be barred from associating with a broker-dealer or investment adviser licensed in Utah. The fine amount will also be increased to \$50,000.

DATED this 17TH day of April, 2006.

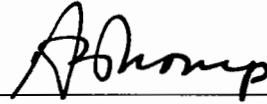

WAYNE KLEIN
Director, Utah Division of Securities



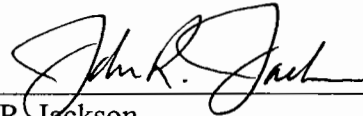
BY THE UTAH SECURITIES ADVISORY BOARD

The foregoing Order is hereby accepted, confirmed and approved by the Utah Securities
Advisory Board.

DATED this 17th April day of ~~March~~ 2006.



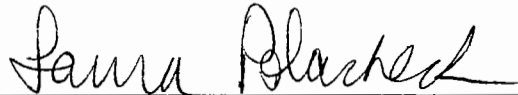
A. Robert Thorup, Chairman



John R. Jackson



Edward L. McCartney



Laura Polacheck

CERTIFICATE OF MAILING

I hereby certify that on the 20th day of April 2006, I mailed, regular mail postage prepaid, a copy of the foregoing **Stipulation and Consent Order as to Adam**

Harrington Rucksdeschel to:

Mark J. Griffin
Woodbury & Kesler PC
265 East 100 South Ste 300
PO Box 3358
Salt Lake City, UT 84111



Executive Secretary